

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 6845 OF 2004

Shri Shivaji Namdeo Misal)
Age 48 yrs, Occ.Business/Agriculture,) ..Petitioner.
R/a.& Post. Chinke, Tal.Sangola,) (Org.Plaintiff)
Dist. Solapur.)

V/s.

1) Shri Vasant Aba Misal)
Age 48 yrs. Occ.-Agriculture)
2) Shri Umrao Aba Misal,)
Age 49 yrs. Occ.-Driver,)
both residing at & post Chinke,)
Tal. Sangola, Dist. Solapur.)
3) Sub Divisional Transport Officer,)
Solapur.)
4) Government of Maharashtra) .. Respondents.
through Dist. Collector, Solapur)

Mr. A. S. Gadkari, Advocate for the Petitioner.

Mr.Dinesh Bhosale, Advocate for Respondent Nos. 1 & 2.

Mr. Arun H. Palekar, AGP for Respondents Nos. 3 & 4.

CORAM : S. B. MHASE, J.

DATED : 24TH MARCH, 2006.

ORAL JUDGMENT :-

1. Heard. Rule returnable forthwith.

2. This petition is directed against the order dated 3.4.2004 passed below Exh. 127 from the Special

Civil Suit No. 58/2001. This is an application by the petitioner, original plaintiff, requesting the court to frame issues in view of the averments made by the defendant in para 11 of the written statement, namely -

"Whether the defendant proved that they have deposited /paid the amount with Finance Company at Miraj and whether the defendant prove that they have purchased the said truck from the plaintiff ?".

The said application to recast the issues was opposed and the trial court rejected the said application.

3. The plaintiff-petitioner has filed a special civil suit No. 58/2001 for relief that defendant Nos. 1 and 2 have forcibly obtained the signatures on the transfer forms and the transfer of truck No.MWU 9104 is illegal and further it be declared that the said truck is of the ownership of the petitioner-plaintiff. There is further prayer for permanent injunction and not to transfer the said truck to third party. The case of the plaintiff-petitioner is that the said truck is belonging to the plaintiff -petitioner. However, the said truck has been forcibly taken by the respondent- defendant and

the signatures on the transfer documents have been forcibly obtained.

4. As against this it is specifically pleaded in para -11 that on 14.11.1994, the amount of Rs.50,000/- was paid to the plaintiff by a cheque for the purpose of household expenses and repairs of the truck and to that effect the stamp was executed. Thereafter, Rs.7000/- were paid for household expenses and it was agreed that when- ever the defendant respondent makes a demand of Rs.57,000/-, the plaintiff petitioner will return the said amount. On a demand being made of the said amount, the petitioner plaintiff though promised to pay the said amount, the plaintiff did not pay and therefore, there was an agreement in respect of the sale of the truck and it was decided that the said truck was to be given for a consideration of Rs.1,50,000/- to the defendant. That was decided on 29.04.2000. It is further averred that amount of Rs.7000/- given on 01.01.1994 plus an amount of Rs.50,000/-, total amount of Rs.57,000/- and the amount of hypothecation of Rs.74,500/- was deposited with the Agrawal Finance on 29.04.2000 and thus the total amount deposited was paid Rs.1,31,500/-. Remaining amount of Rs.18,500/- was paid on 3.5.2000 and thus the transaction in respect of the sale was completed and thereafter the vehicle was transferred.

Thus the defendant- respondent has pleaded that initially an amount of loan for repairs of the truck and household expenses was given and as the same was not repaid there was a transaction of the sale of the said truck and a detailed transaction as stated in the written statement had been completed. Thus according to the defendant, he is owner of the said truck in view of the purchase of the said truck from the plaintiff and for that purpose some amount of the earlier hand loan has been adjusted and some amount has been raised through a finance company and the truck is hypothecated with the finance company. Thus the defendant claimed the ownership of the said truck and also a lawful possession of the said truck.

5. This court has perused the issues framed at Exh. 48 and thereafter, the issues which have been recasted at Exh.77. In these issues, there is no issue in respect of the averment made in para No.11 and therefore, the plaintiff was justified in making an application Exh.127. No doubt that the said application has been given at a belated stage and even after the statement of the defendant was recorded. But the said application was given, in any event, prior to the commencement of the cross-examination of the defendant respondent. It is well settled principle that any issue

which arises from the pleadings of the parties can be recasted and/ or framed at any stage of the proceedings under order 14 Rule 5 of C.P.C. However, in that eventuality if the party suffers from the adverse result of the framing of issues at a latter stage, the court shall give an opportunity to lead evidence for and against said issue. It is told to this court that after the rejection of this application, the cross examination of the defendant has commenced and completed. However, this court has noted that the issue does arise out of the pleadings of the parties and it was necessary for adjudication and the court should have framed the said issue, because failure to prove that signature of plaintiff was taken forcibly will not result into conferment of title of truck on defendant, as transfer certificate is not a title document though it may be one of the relevant facts to prove title of truck. The order which has been passed by the trial court is very cryptic. That does not show that the relevant issues have been framed by the trial court and therefore, it is necessary to allow this writ petition.

6. However, under the circumstances since the burden of issue is on the defendant, the defendant respondent will have to be given an opportunity to lead additional evidence if he deserves to lead in this

respect. Therefore, the petition is allowed. The trial court is directed to frame the issue, as stated / prayed in Exh. 127 and it is further directed that further opportunity to lead proper evidence in respect of the Exh. 127 be given to the defendant respondent and for that purpose if the defendant desires to re-examine him, the said permission may be allowed. It is further directed that if the defendant desires to call for any witness to prove the said issue, the witness summons as per the request of the defendant may also be granted by the trial court.

7. With the above observations, the Rule is made absolute in the above terms.

(S.B.MHASE, J)

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